IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITIN NO. 499 of 2004

Mr. Ashok Jayantilal Khandwala... Petitioner

V/s

State of Maharashtra & Ors. ... Respondents

Mr. Vivek Kantawala i/b M/s Kantawala & Co. for petitioner

Mr. K.K. Tated for respondent No.2

Mr. D.P. Adsule,APP for the State

CORAM: V.M. KANADE, J.

DATED: MARCH 4,2005

P.C. :-

. Heard learned counsel for petitioners. Learned counsel for petitioner has taken an exception to the order of issuance of process by the Metropolitan Magistrate, 33rd Court at Ballard Pier on the complaint filed by complainant under section 138 of Negotiable Instruments Act. It is submitted by learned counsel appearing on behalf of petitioners that so far as petitioner is concerned there are no averments either in the statutory notice or the complaint stating what role was played by him in day to day management of the company. It is submitted that except vague allegations in the complaint in paragraph-1 “that the accused No.2 to 4 are the Directors who are in charge and

looking after day to day business of accused No.1". The averments in paragraph No.4 of the complaint are that " in view of the above mentioned facts and circumstances it is crystal clear that the accused has committed offence punishable under section 138 of the Negotiable Instruments Act and all of them are looking after day to day business of the company and as such are also liable under the provisions of 138 of Negotiable Instruments Act read with section 141 of the said Act and the accused have committed offence". Except these averments of the complaint no particulars have been mentioned and the said averments are absolutely vague and, therefore, there is no material available with complainant to show that accused No.2 to 4 who are the Directors of the company are liable under the provisions of section 138 of Negotiable Instruments Act.

. In support of said submission, learned counsel relies on the judgments of Apex court reported in **SEBI & Corporate Law – Reports (vol. 54) 595 in the case of Monaben Ketanbhai Shah vs. State of Gujarat** and **AIR 1983 SC 67 in the case of Municipal Corporation of Delhi vs. Ram Kishan Rohtani & Ors.**

. Learned counsel appearing on behalf of respondent has vehemently opposed the said submission made by learned counsel for petitioner. He submits that averment in the said cited case is entirely different. In the said case, accused was a partner in the partnership firm and no

averments were made against the said accused in the complaint. It is further submitted that admittedly the errors in the petition

are regarding the date of dishonoured cheque, amount and number of cheque. Learned counsel for petitioner submits that these errors are inadvertance and typographical errors.

. The learned counsel for respondent therefore, submits that this question can be resolved only after evidence is adduced before the trial court.

. In my view, the submission made by learned counsel for petitioner cannot be accepted. In paragraph-1 of complaint it is averred as follows:

"The Complainant says that Accused No.1 is a Company registered under the Companies Act,1956 and Accused Nos. 2 to 4 are the Directors who are incharge and looking after day to day business of Accused No.1".

Simiarly, in para-4 of the complaint, it is averred as follows:

" In view of the above mentioned facts and circumstances it is crystal clear that the accused has committed offence punishable under section 138 of the Negotiable Instruments Act and all of them are looking after day to day business of the company and as such are also liable under the provisions of 138 of Negotiable Instruments Act read with section 141 of the said Act and the accused have committed offence".

. In my view, there are specific avements made in the complaint stating that accused No.2 to 4 were incharge and were looking after day to day business of the company.

. So far as the judgment of Apex Court relies upon by learned counsel for petitioner is concerned, ratio in the said judgment will not be applicable to the facts of present case as in the said case, the Apex Court has observed that there was no averment in the body of complaint or in the title of the complaint stating that accused was a partner of the firm and that they should not be held liable under the provisions of section 138 of Negotiable Instruments Act. The ratio in the said judgment, therefore, isnot applicable to the facts of this case. So far as the judgment of a single Judge of this court is concerned, the said judgment is not applicable because in the said case also there was no averment at all made in the complaint. In view of these, petition is dismissed. The trial court is directed to decide the complaint as expeditiously as possible in any case within a period of 3 months. All contentions raised by petitioner in this petition are kept open.

(V.M. Kanade, J.)